

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:11-HC-2132-BR

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	ORDER
v.	)	
	)	
CHRISTOPHER EDWARDS,	)	
	)	
Respondent.	)	

On 11 July 2011, petitioner United States of America (“the government”) initiated this proceeding seeking to have respondent Christopher Edwards (“Edwards”) civilly committed as a sexually dangerous person under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), codified at 18 U.S.C. §§ 4247-4248. Pursuant to 18 U.S.C. § 4247(d), the court conducted an evidentiary hearing in this matter on 26 and 27 June 2012.

**I. BACKGROUND**

Edwards was thirty-four years old at the time of the evidentiary hearing. On 27 February 1992, when Edwards was thirteen years old, he was charged with one count of Indecent Liberties with a Child. (Gov’t Exs. 2 at 2; 4 at 4; 5.) He molested a six-year-old boy on two dates in early 1992. (Id.) He was placed on probation for an indefinite period of time with the Wyoming Department of Family Services. (Gov’t Exs. 2 at 2; 4 at 4; 6.) His probation was subsequently dismissed in October 1993. (Gov’t Exs. 2 at 2; 4 at 4.) At the evidentiary hearing, Edwards admitted to engaging in fondling, masturbation, and oral sex with the six-year-old victim.

Edwards was diagnosed with Human Immunodeficiency Virus (“HIV”) in 1995 when he was seventeen years old. (Gov’t Exs. 2 at 7; 4 at 3.) At the evidentiary hearing, he testified that

the news of this diagnosis caused him to become very depressed. (See also Gov't Exs. 2 at 7; 4 at 3.)

In 2001, at the age of twenty-three, Edwards made contact in an online chat room with a federal undercover agent posing as a fourteen-year-old boy named "Brian." (Gov't Exs. 2 at 3-4; 4 at 5-6; 7 at 4-9.) Edwards traded pornographic photos of prepubescent and pubescent boys as well as nude photos of himself with "Brian." (Id.) Edwards and "Brian" continued to correspond through email, and they eventually agreed to meet at a bus station in Wyoming. (Id.) Edwards was arrested at the bus station, and a subsequent search of his home computer revealed more than 2000 images of child pornography. (Id.) The age range of individuals depicted in the images was approximately three years old to adulthood. (Id.)

As a result of these occurrences, Edwards was charged with Sexual Exploitation of Children in Wyoming, but the state charge was later dismissed in favor of federal prosecution. (Gov't Exs. 2 at 3; 4 at 5-6; 7 at 3.) Edwards then pled guilty to Transfer of Obscene Matters and was sentenced to fifteen months imprisonment followed by three years of supervised release. (Id.; Gov't Ex. 8.) Following his release from prison in 2002, Edwards participated in sex offender treatment in Wyoming for approximately two and a half years. (See, e.g., Gov't Exs. 4 at 3; 9-13; Resp't Ex. 8.)

In 2005, while he was still on federal probation, Edwards was charged in the state of Wyoming with two counts of Indecent Liberties with a Child after he exposed himself to young boys on two separate occasions while masturbating in his car.<sup>1</sup> (Gov't Exs. 2 at 4-5; 4 at 6; 16-17.) He was convicted on both counts and sentenced to three to seven years imprisonment.

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<sup>1</sup> At the evidentiary hearing, Edwards testified that he had consumed alcohol and/or smoked marijuana immediately prior to the commitment of these offenses. (See also Gov't Exs. 2 at 5; 4 at 6; 17 at 2.)

(Gov't Exs. 2 at 4; 4 at 6; 21.) His federal supervised release was also revoked. He was sentenced to an additional eighteen months imprisonment, to run consecutively to the previously imposed state sentence, and twenty-four months of supervised release. (Gov't Exs. 4 at 6; 18; 20.) Edwards concluded his state sentence on 25 July 2010 and was then transferred to federal custody. (Gov't Ex. 4 at 6.) He has remained in federal custody since that time.

Edwards has no juvenile or adult criminal history other than the offenses that have been described above, and he has not received any major disciplinary infractions during his periods of incarceration. (Gov't Exs. 2 at 9; 4 at 4, 7.)

## **II. DISCUSSION**

The Adam Walsh Act provides for the civil commitment of “sexually dangerous person[s].” 18 U.S.C. § 4248. Under 18 U.S.C. § 4247(a)(5), a “sexually dangerous person” is one “who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” A person is “sexually dangerous to others” if he “suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6).

Under the Adam Walsh Act, the government has the burden of proving that Edwards is sexually dangerous by clear and convincing evidence. 18 U.S.C. § 4248(d). “The clear and convincing evidence standard is an ‘intermediate standard,’ lying somewhere ‘between preponderance of the evidence and proof beyond a reasonable doubt.’” United States v. Hunt, 643 F. Supp. 2d 161, 179 (D. Mass. 2009) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)). The government must produce “[e]vidence indicating that the thing to be proved is

highly probable or reasonably certain.”” Id. (alteration in original) (quoting Black’s Law Dictionary 596 (8th ed. 2004)).

Thus, in order to prove that Edwards is a “sexually dangerous person,” the government must prove three elements by clear and convincing evidence: (1) that Edwards engaged in or attempted to engage in sexually violent conduct or child molestation; (2) that Edwards suffers from a serious mental illness, abnormality, or disorder; and (3) that, as a result of the serious mental illness, abnormality, or disorder, Edwards would have serious difficulty in refraining from sexually violent conduct or child molestation if he were to be released. See 18 U.S.C. § 4247(a)(5)-(6); 18 U.S.C. § 4248.

Three experts testified at the evidentiary hearing. Gary Zinik, Ph.D., and Manuel Gutierrez, Psy.D., testified on behalf of the government. Frank Balch Wood, Ph.D., testified on behalf of Edwards as an additional examiner selected pursuant to 18 U.S.C. § 4247(b). (See DE # 17.) Edwards was the only other witness who testified at the hearing.

A. Past Child Molestation

The court finds that the first criterion for commitment under the Adam Walsh Act, that Edwards has “engaged or attempted to engage in sexually violent conduct or child molestation” in the past, is satisfied. 18 U.S.C. § 4247(a)(5). At the evidentiary hearing, Edwards admitted to molesting a six-year-old boy, and all three experts in this case agree that Edwards has engaged in or attempted to engage in child molestation.

B. Serious Mental Illness, Abnormality, or Disorder

To meet its burden of establishing that Edwards is “sexually dangerous to others,” the government must also prove that Edwards “suffers from a serious mental illness, abnormality, or

disorder.” 18 U.S.C. § 4247(a)(6). In this case, the government contends that Edwards suffers from pedophilia. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (“DSM-IV-TR”) lists the criteria of this disorder as follows:

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A.

DSM-IV-TR § 302.2 at 572.<sup>2</sup>

Edwards meets all three of these diagnostic criteria. At the evidentiary hearing, Edwards admitted to being subconsciously aroused by thoughts of young boys and also admitted that he has had fantasies of exposing himself to such children. Edwards additionally testified that during his sex offender treatment in 2004, he admitted to being sexually attracted to boys between the ages of twelve and fifteen.<sup>3</sup> (See also Gov’t Ex. 12.) Edwards’s attraction to prepubescent boys has caused him interpersonal difficulty and marked distress, including feelings of failure and lack of control. Edwards has further admitted that he acted on his sexual urges. He testified that on two separate occasions in 2005, he exposed himself to and masturbated in front of boys between the ages of seven and eleven. Moreover, all three experts

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<sup>2</sup> The 1992 conviction for Indecent Liberties with a Child has not been considered by the court in determining whether Edwards suffers from pedophilia. At the time of the offense, Edwards was thirteen years old. The DSM-IV-TR indicates that an individual must be at least sixteen years old at the time of the sexual activity in order for that activity to be taken into account when diagnosing pedophilia. (See also Gov’t Exs. 2 at 10-11; 4 at 8.)

<sup>3</sup> The court notes that although the evidence in this case suggests that Edwards may also be attracted to pubescent or post-pubescent boys, it is clear that Edwards has experienced recurrent, intense sexually arousing fantasies or sexual urges involving prepubescent boys.

in this case agree that Edwards suffers from pedophilia, sexually attracted to males, nonexclusive type. (Gov't Exs. 2 at 10-11; 4 at 7; Resp't Ex. 2 at 2.)

In addition, both Dr. Zinik and Dr. Gutierrez testified at the evidentiary hearing that Edwards's pedophilia is "serious" for the purposes of the Adam Walsh Act, and the court credits their testimony with respect to this issue. Edwards's pedophilic disorder has significantly contributed to his history of sexual offending. It is also evident that Edwards's pedophilic condition has caused significant impairment in many areas of his life and has caused harm to others. Accordingly, the court concludes that the government has proven by clear and convincing evidence that Edwards currently suffers from pedophilia, which is a serious mental illness, abnormality, or disorder.<sup>4</sup>

C. Serious Difficulty Refraining

To meet its burden of establishing that Edwards is "sexually dangerous to others," the government must also prove that Edwards, if released, "would have serious difficulty in refraining from sexually violent conduct or child molestation" as a result of his serious mental illness, abnormality, or disorder. 18 U.S.C. § 4247(a)(6). The determination under this prong requires the court to consider Edwards's volitional control over his actions understood in relation to his mental illness, and it is also informed by the constitutional constraints on the civil commitment scheme. In Kansas v. Crane, 534 U.S. 407 (2002), the United States Supreme Court held that in order to civilly commit someone for sexual dangerousness "there must be

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<sup>4</sup> The experts disagree regarding the other aspects of Edwards's diagnosis. Dr. Zinik has also diagnosed Edwards with alcohol and marijuana abuse by history, provisional. (Gov't Ex. 2 at 10-12.) Dr. Gutierrez has diagnosed Edwards as suffering from depressive disorder not otherwise specified and cannabis abuse. (Gov't Ex. 4 at 7-8.) Dr. Wood's additional diagnoses include major depressive disorder of moderate severity and episode of alcohol abuse. (Resp't Ex. 2 at 2-3.)

proof of serious difficulty in controlling behavior.” Id. at 413. The Supreme Court noted that this standard allows courts wide discretion in relying on a number of different factors relevant to sexual dangerousness. The standard does not have “a particularly narrow or technical meaning;” nor is it demonstrable with “mathematical precision.” Id.

As a result, the court does not construe this criterion for commitment to require proof of any statistical probability of reoffense. The Adam Walsh Act does not ask the finder of fact to determine exactly how likely the respondent is to reoffend, but whether he will have “serious difficulty” in refraining from doing so. Recidivism rates are circumstantially relevant to the serious difficulty inquiry because offenders who continually expose themselves to punishment may be presumed to have the most difficulty refraining from sexual reoffending. But the ultimate question called for by the Adam Walsh Act concerns the self-control of an individual, not the statistical re-arrest patterns of a given population. Thus, the court considers the recidivism rates associated with Edwards’s actuarial scores,<sup>5</sup> but affords them less weight than Edwards’s past and current conduct, and the testimony of the experts as a whole.

Here, both Dr. Zinik and Dr. Gutierrez testified that, in their opinions, Edwards would

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<sup>5</sup> Dr. Gutierrez gave Edwards a score of 8 on the Static 99-R actuarial instrument, which indicates a high risk of reoffense. (Gov’t Ex. 4 at 9.) He testified that offenders from a preselected high risk and needs sample with the same score as Edwards have been found to sexually reoffend at a rate of 45% within five years and 55.3% within ten years. (Id.)

Dr. Zinik testified that he used several actuarial instruments during the course of his evaluation. He gave Edwards a score of 8 on the Static 99-R, a 12 on the Static 2002-R, and a 9 on the Minnesota Sex Offender Screening Tool-Revised. (Gov’t Ex. 2 at 18.) These scores place Edwards within the highest risk category for being charged with or convicted of a sexual offense. (Id.)

Dr. Wood gave Edwards a score of 8 on the Static 99-R and a score of 12 on the Static 2002-R. (Resp’t Ex. 2 at 3.) Dr. Wood reported the positive predictive value for each actuarial instrument and then considered the mean of the two instruments as the likely best estimate of the risk of recidivism. (Id.) He determined that Edwards is likely to sexually reoffend at a rate of 33% within five years and 34% within ten years. (Id.) At the evidentiary hearing, the government took issue with this analysis, arguing that Dr. Wood did not correctly apply the scoring manuals in determining the percentage estimates for future sexual reoffense. The court emphasizes that any discrepancies in Dr. Wood’s scoring methods would not change the court’s conclusion regarding the ultimate issue in this case.

have serious difficulty in refraining from child molestation if released. At the evidentiary hearing, Drs. Zinik and Gutierrez identified several factors that they believe significantly increase Edwards's risk of sexual reoffense, including his past failures in cooperating with supervision and his commission of offenses in 2005 while under supervision and while he was in sex offender treatment. The court finds that the conclusions of Dr. Zinik and Dr. Gutierrez are based to a large extent on Edwards's behavior during his adolescence and at the time that he committed the sexual offenses at issue. However, "[t]his final step of the [sexual dangerousness] inquiry, focused as it is on future behavior, must appropriately take into account the current status of the respondent." United States v. Caporale, 5:08-HC-2037-BO, 2012 WL 1389666, at \*6 (E.D.N.C. Apr. 20, 2012) (emphasis in original). Because Drs. Zinik and Gutierrez did not fully consider Edwards's recent conduct and present mental state, the court affords less weight to their opinions with regard to the third criterion for commitment under the Adam Walsh Act.

In contrast to Drs. Zinik and Gutierrez, Dr. Wood specifically testified that he evaluated Edwards's current status in conducting his analysis. He concluded that Edwards would not have serious difficulty in refraining from child molestation if he is released, and the court credits his testimony with respect to this issue.

In this case, the government has not introduced any evidence to show that Edwards has engaged in misconduct, sexual or otherwise, during his most recent period of incarceration. Edwards has not received any major disciplinary infractions since he has been in federal custody, nor did he receive any while he was in state custody in Wyoming from late 2005 to 2010.<sup>6</sup> He

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<sup>6</sup> Both of the government's experts have noted that Edwards has made a good adjustment in prison and has not received any incident reports. (Gov't Exs. 2 at 9; 4 at 7.) Although the government has produced absolutely no documentation to show that Edwards has received any disciplinary infractions while incarcerated, Edwards candidly (continued...)



has not engaged in any violent conduct during these periods of incarceration. There is also no evidence that he has possessed child pornography, exposed himself, engaged in homosexual conduct, or engaged in any other conduct that would suggest that he has sexual urges that are difficult for him to control. In addition, Edwards has been consistently employed while in federal custody and has received positive work evaluations. (See, e.g., Resp't Exs. 21, 24.) An individual experiencing great difficulty conforming his conduct to the rules of society would likely exhibit a pattern of bad behavior while incarcerated, but Edwards has not done so. In contrast to many inmates, his conduct during his recent incarceration indicates that he does not have difficulty obeying general rules, even the strict regulations of the prison environment.

Furthermore, although the experts could not agree on an exact diagnosis, the court finds that Edwards has experienced symptoms of depression throughout the course of his life and that there is a relationship between his mood disturbances and his prior criminal behavior. (See, e.g., Gov't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 3 ¶ 4 ("Respondent has also had ongoing issues with depression."); Gov't Ex. 2 at 15 (Dr. Zinik noting in his report that "[t]here is some information in the records suggesting that Mr. Edwards[']s sexual offending was associated with period[s] of time during which he felt frustrated and depressed, suggesting he pursued deviant sex as a method of coping"); Gov't Ex. 4 at 7-8 (Dr. Gutierrez diagnosing Edwards with depressive disorder not otherwise specified); Resp't Ex. 2 at 2 (Dr. Wood concluding that Edwards's "adult sexual offenses . . . occurred during . . . major depressive episodes");

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<sup>6</sup>(...continued)

admitted at the evidentiary hearing that he has been involved in a few minor incidents while in custody but that he has not received any major disciplinary write-ups. He testified that he had a few confrontations with prison staff during the first two years of his incarceration in Wyoming following his 2005 convictions. In addition, he testified that while in federal custody, he was accused of depositing mail in the wrong mailbox. Edwards's admission of involvement in these minor incidents demonstrates that he has taken responsibility for his actions.

Resp't Exs. 10; 13.) During the evidentiary hearing, Edwards testified that although he took antidepressant medication sporadically in the past, he has now been compliant with his prescribed antidepressant medication for the past six years. He testified that the medication is controlling his depression "quite well" and that his sex drive has been lowered as a result. Dr. Wood also testified that the antidepressant medication has deterred Edwards's sex drive<sup>7</sup> and improved his impulse control. Dr. Wood found that Edwards is not sexually dangerous given the successful treatment of his depression, and the court agrees with this conclusion.

The government argues that Edwards's HIV-positive status makes him more sexually dangerous than other recidivists. (See, e.g., Gov't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 12 ¶ 8 ("Dr. Zinik thought that Respondent's HIV positive status can increase his risk [of sexual dangerousness] because of the risk that he could infect a young victim if he reoffends.")) While it is not the court's intention to minimize the threat of infection that Edwards poses to others, the court finds that HIV is a physical condition that has no relation to volitional control.<sup>8</sup> The fact that Edwards is HIV positive is not in any way predictive of future behavior. Ultimately, Edwards's volitional control must be "viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself." Crane, 534 U.S. at 413 (emphases added). Edwards's HIV-positive status simply cannot factor into such an analysis.

The government also contends that Edwards will have serious difficulty in refraining

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<sup>7</sup> At the evidentiary hearing, Edwards testified that prior to being treated for depression, he would masturbate approximately twice a day. Since being treated for depression, he now masturbates once every two to three weeks. Dr. Wood testified that Edwards made a similar disclosure during their interview. (See also Resp't Ex. 2 at 2.)

<sup>8</sup> The court notes that Dr. Zinik admitted on cross-examination that HIV is not related to volitional control.

from child molestation because he does not have a written, extensively detailed, relapse prevention and release plan. (See, e.g., Gov't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 12 ¶ 8.) Although the court acknowledges that Edwards has not developed a written relapse prevention and release plan in conjunction with a treatment provider, there is no requirement for him to do so. Furthermore, the court notes that Edwards's two-year term of supervised release remains to be served, which imposes specific conditions regarding sex offender treatment, polygraph testing, and contact with minors. (See Gov't Exs. 8 at 3-4; 20.) At the evidentiary hearing, Edwards also testified that he will voluntarily agree to modify the terms of his supervised release to include additional conditions such as continuing his compliance with prescribed antidepressant medication; participating in substance abuse counseling; abstaining from the purchase or use of alcohol; abstaining from entering establishments that serve alcohol; and consenting to searches of his home and to drug testing. Such behavior is consistent with someone who is committed to continuing on the path to change.

Edwards has additionally received confirmation from his former treatment provider, Dr. Charlie Powell, that he can return to Dr. Powell's outpatient sex offender treatment program in Wyoming if he is released. (Resp't Ex. 29.) During the evidentiary hearing, Edwards also described his hope of obtaining a referral that would allow him to reside in a halfway house in Casper, Wyoming if he is released.<sup>9</sup> Moreover, Edwards's mother has expressed her physical and emotional availability to provide love and support to her son. (See Resp't Ex. 2 at 3; 28.) All of this evidence tends to show that upon Edwards's release from custody, he will have a

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<sup>9</sup> The court notes that Edwards has received significant release planning assistance from his attorney and his attorney's staff, who have gone to great lengths to help Edwards locate and secure community resources and opportunities in the Casper, Wyoming area.

system in place that may provide additional support for his own ability to control his sexual impulses.

Most importantly, the court finds Edwards to be a very credible witness. At the evidentiary hearing, Edwards testified that he understands his sexual triggers and that he understands the necessity of seeking assistance if he experiences sexual fantasies involving children. He convincingly testified that despite the government's contentions, he never intended to minimize his crimes. He admitted that he has hurt children and their families and that he has also hurt his own family and the community. Edwards further admitted that he is greatly bothered by the fact that he was capable of such destructive, heartless acts. He expressed genuine remorse for his past behavior, and his attitude reflects accountability for the crimes he has committed. His testimony at the evidentiary hearing demonstrates his abandonment of the kind of logic that a pedophile might engage in to justify or rationalize his offenses against children.

Edwards has grown and matured since his last offense in 2005. His mood is stable and controlled through antidepressants. He knows that he will face challenges upon release, but he appears to have a genuine desire and ability to conform his behavior to the law. The court realizes that it is possible that Edwards may commit an act of child molestation in the future. "However, in the absence of clear and convincing proof that a serious mental impairment causes an individual to have serious difficulty in controlling his behavior, the constitution requires reliance on the criminal law, rather than a civil commitment, to deal with that risk." United States v. Wilkinson, 646 F. Supp. 2d 194, 209 (D. Mass. 2009). As the government has not presented such clear and convincing proof, Edwards may not be civilly committed.

### III. CONCLUSION

For the foregoing reasons, the government has failed to show by clear and convincing evidence that Edwards suffers from a serious mental illness, abnormality, or disorder, as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released. Accordingly, the court concludes that Edwards is not a sexually dangerous person under the Adam Walsh Act and ORDERS that the government release Edwards forthwith to the custody and supervision of the appropriate United States Probation Officer. The Clerk is DIRECTED to close this case.

This 26 July 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge